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DISTRICT COURT OF GUAM  
APR 04 2003  
MARY L. M. MORAN  
CLERK OF COURT

DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

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KAIOH SUISAN CO., LTD.

Civil Case No. CV02-00021

Plaintiff,

vs.

ORDER

GUAM YTK CORP.,

Defendant.

On March 28, 2003, this matter came before the Court on a Summary Judgment Motion filed by the plaintiff, Kaioh Suisan Co., Ltd. After hearing argument from counsel, the Court DENIED the Defendant's motion. For the reasons discussed more fully herein, the Court memorializes the basis for its decision denying the motion.

**I. FACTS**

On or before March 10, 2001, defendant, Guam YTK Corp. ("Guam YTK") and the plaintiff, Kaioh Suisan Co., Ltd. ("Kaioh") allegedly entered into a written agreement prepared by the plaintiff. Pursuant to the written terms, the plaintiff allegedly agreed to lend the defendant One Hundred Million Japanese Yen. The defendant was to repay the loan in installments of Five Million Yen at the end of each month beginning with January of 2002. Additionally, the defendant was to pay interest of 2 percent (2%) per annum from the date of the transfer of the funds, to be calculated and paid after the payment of principal is due. The plaintiff made two wire transfer payments of Fifty Million Japanese Yen, wherein each of the wire transfers stated

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1 that the purpose of the transfer was for the "advance payment" for "tuna." The defendant never  
2 made any payments on the loan and the plaintiff eventually filed suit in this Court.

## 3 II. ANALYSIS

4 The plaintiff has moved for summary judgment. Summary judgment is appropriate when  
5 the evidence, read in the light most favorable to the nonmoving party, demonstrates that there  
6 is no genuine issue as to any material fact, and the moving party is entitled to judgment as a  
7 matter of law. Fed. R. Civ. P. 56(c). The party opposing summary judgment cannot rest on  
8 conclusory allegations, but must set forth specific facts showing that there is a genuine issue for  
9 trial. Leer v. Murphy, 844 F.2d 628, 631 (9<sup>th</sup> Cir. 1988). Moreover, to defeat a summary  
10 judgment motion, the nonmoving party must come forward with evidence sufficient to establish  
11 the existence of any disputed element essential to that party's case, and for which that party will  
12 bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 102 S.Ct. 2548  
13 (1986). In determining whether to grant summary judgment, all justifiable inferences must be  
14 drawn in favor of the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255  
15 (1986).

16 The plaintiff argues that summary judgment is appropriate because the parties entered  
17 into an unambiguous agreement. It identifies the parties, the amount borrowed and terms of  
18 repayment. In addition, because the defendant accepted the funds, the plaintiff claims that the  
19 defendant has affirmed the validity of the contract for which the defendant cannot dispute.

20 In response, the defendant states that there is a clear factual dispute between the parties  
21 as to the nature and purpose of the agreement. For example, the defendant's president, Mr. Tom  
22 Kamiyama ("Mr. Kamiyama") did not understand that the written agreement memorialized a  
23 loan transaction. Rather, Mr. Kamiyama's understanding was that the plaintiff prepared it to  
24 memorialize an advance payment and investment agreement regarding a fishing venture between  
25 the parties. Because Mr. Kamiyama neither is fluent in the English language nor reads or writes  
26 English, the plaintiff explained to him in Japanese (his native language) that the document  
27 memorialized such an agreement. Therefore, the defendant asserts that since there is a factual  
28 dispute regarding the formation of the agreement, summary judgment would be improper.

1       The Court notes that the agreement in question is bereft of all but the most basic of terms.  
2       While the agreement identifies the parties, the amount borrowed and terms of repayment, there  
3       is no integration or merger clause suggesting that it represents the entire agreement of the parties.  
4       Moreover, as conceded by the plaintiff, the agreement appears to have been drafted for the  
5       plaintiff by a non-lawyer and by somebody for whom English is not his first language, which  
6       may have led in part to the problems. And, it was signed by the defendant's president, Mr.  
7       Kamiyama, who admittedly may have been more limited in his understanding of the English  
8       language than the draftsman.

9       The Court finds there is evidence suggesting that the parties may have had a different  
10      understanding as to the very purpose of the agreement. Attached to Mr. Kamiyama's declaration  
11      are two wire transfers wherein each states that the purpose of the transfer is "advance payment"  
12      for "tuna."<sup>1</sup> While the plaintiff states that these wire transfer documents add nothing to the  
13      defendant's argument because they were made to the bank, the Court finds the plaintiff's  
14      argument unpersuasive. The wire transfers do raise a factual issue that is material to this matter,  
15      and that is what the parties understood to be the true contractual relationship. The question of  
16      whether there was a "meeting of the minds" between the parties and they were entering into an  
17      unambiguous loan agreement or a business venture that went sour remains unanswered. See  
18      Restatement 2d of Contracts § 20 (1981) ("There is no manifestation of mutual assent to an  
19      exchange if the parties attach materially different meanings to their manifestations and ... neither  
20      party knows or has reason to know the meaning attached by the other....").

21      Additionally, the defendant argues that summary judgment would be improper in this  
22      instance because the plaintiff is proceeding without a business license. The defendant claims that  
23      under the Guam Business License Law the plaintiff is barred from obtaining relief in the courts  
24      of Guam for any activity occurring during the time that the plaintiff does not have a business  
25      license. Pursuant to 11 Guam Code Ann. §70130

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27      <sup>1</sup>Kaioh Suisan Co., Ltd. V. Guam YTK Corporation, Civil Case No. 02-00021, Declaration of Tom  
28      Kamiyama, in support of Defendant's Opposition to Plaintiff's Motion for Summary Judgment filed March 14,  
2003, Exhibit A attached thereto.

(d) no commercial activity (including operating or leasing of real property) doing business on Guam without a business license may file suit in Guam courts until such time that a business license is obtained. No person engaged in commercial activity without a business license may use the courts to enforce, directly or indirectly, any obligation, lien, or contract incurred during the period of such commercial activity without a business license;

The plaintiff argues that it does not need to have a business license because it is not engaged in business on Guam. In fact, its only connection with Guam is the lending of money to the defendant. For support, the plaintiff cites to EIE Guam Corporation v. Long Term Credit Bank of Japan, 1998 Guam 6, wherein the Guam Supreme Court held that a bank in Japan, which lent money that was used to build a hotel on Guam was not doing business on Guam requiring it to obtain a business license. However, unlike the plaintiff in EIE, upon review of the documents submitted, it is unclear whether or not the plaintiff's only business is the "loaning" of money to the defendant. The plaintiff acknowledges that the parties are involved in "another dispute as to the same basic business, that is the catching, transshipping and marketing of tuna."<sup>2</sup>

All justifiable inferences must be drawn in favor of the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). Therefore, the Court finds that there are issues raised both by the defendant and the plaintiff itself for which granting summary judgment at this point in time would be improper. Accordingly, the Plaintiff's Motion for Summary Judgment is Denied.

### III. CONCLUSION


The Court finds that the defendant has raised genuine issues of material fact. Accordingly, the Court hereby DENIES the Plaintiff's Motion for Summary Judgment.

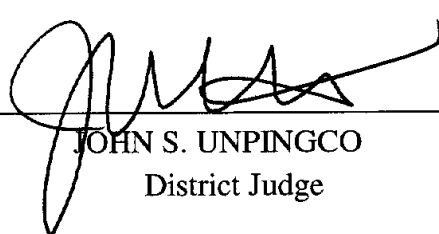
IT IS SO ORDERED.

Dated this 3<sup>rd</sup> day of April, 2003.

Notice is hereby given that this document was entered on the docket on APR 04 2003. No separate notice of entry on the docket will be issued by this Court.

Mary L. M. Moran  
Clerk, District Court of Guam

By:  APR 04 2003  
Deputy Clerk Date

  
JOHN S. UNPINGCO  
District Judge

<sup>2</sup>See Kaioh Suisan Co., Ltd. V. Guam YTK Corporation, Civil Case No. 02-00021 Ltd's Memorandum in Support of its Motion for Summary Judgment filed on February 6, 2003, page 6.